



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0134]

Public Hearing to Determine Whether Wildfire Has Met Remedy Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public hearing.

SUMMARY: NHTSA will hold a public hearing on whether Snyder Computer Systems, Inc. and Snyder Systems, Inc., also known as Wildfire Motors (Wildfire),¹ of Steubenville, Ohio, have reasonably met their obligation to remedy noncompliances with Federal Motor Vehicle Safety Standard (FMVSS) No. 122, Motorcycle brake systems, in a recall involving Model Year (MY) 2009 WF650-C three-wheeled vehicles, which Wildfire imported from China.

DATES: The public hearing will be held beginning at 10 a.m. ET on October 15, 2012 in the Oklahoma City room of the U.S. Department of Transportation Conference Center, located at 1200 New Jersey Avenue, SE., Washington, DC 20590. NHTSA recommends that all persons attending the proceedings arrive at least 45 minutes early in order to facilitate entry into the Conference Center. NHTSA cannot ensure that late arrivals will be permitted access to the hearing. Attendees are strongly discouraged from bringing laptop computers to the hearing, as they will be subject to additional security measures. If you wish to attend or speak at the hearing, you must register in advance no later than October 9, 2012 (and October 4, 2012 for non-U.S. citizens), by following the instructions in the PROCEDURAL MATTERS section of this notice. NHTSA will consider late registrants to the extent time and space allows, but cannot ensure that

¹ Wildfire Motors is a registered trade name of Snyder Computer Systems, Inc. In correspondence with NHTSA, Wildfire has also used the corporate name Snyder Systems, Inc.

late registrants will be able to attend or speak at the hearing. To ensure that NHTSA has an opportunity to consider comments, NHTSA must receive written comments by October 9, 2012.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202-366-9324.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For registration to attend or speak at the public hearing: Sabrina Fleming, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-9896) (Fax: 202-366-3081).

For hearing procedures: Kerry Kolodziej, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-

366-5263) (Fax: 202-366-3820). Information regarding the recall is available on NHTSA's website: <http://www.safercar.gov>. To find this recall: (1) in the drop-down menu under "Safety Recalls," search for a recall by vehicle; (2) select model year 2009; (3) select Wildfire as the make; (4) select WF650-C as the model; and (5) click "Retrieve Recalls." Once information on Recall No. 12V-031 is displayed, clicking on the "Document Search" button will display recall-related documents.

SUPPLEMENTAL INFORMATION: Pursuant to 49 U.S.C. 30120(e) and 49 CFR 557.6(d) and 557.7, NHTSA has decided to hold a public hearing on whether Wildfire has reasonably met its obligation under the National Traffic and Motor Vehicle Safety Act, as amended (Safety Act), to remedy the MY 2009 Wildfire WF650-C's noncompliances with FMVSS No. 122, Motorcycle brake systems. The noncompliances are the subject of a recall campaign, Recall No. 12V-031.

I. Initiation of a Recall

A manufacturer of a motor vehicle that decides in good faith that the vehicle does not comply with an applicable FMVSS must notify NHTSA by submitting a Defect and Noncompliance Information Report, commonly referred to as a Part 573 Report. 49 U.S.C. 30118(c); 49 CFR 573.6.² A Part 573 Report shall be submitted not more than 5 working days after a noncompliance with a FMVSS has been determined to exist. 49 CFR 573.6(b). The manufacturer must subsequently file quarterly reports with NHTSA containing information including the number of vehicles that have been remedied. 49 CFR 573.7.

Pursuant to the Safety Act, a "manufacturer" of a motor vehicle is a person manufacturing or assembling motor vehicles, or a person importing motor vehicles for resale. 49

² In addition to its notification to NHTSA, if the manufacturer of a motor vehicle decides in good faith that the vehicle does not comply with an applicable FMVSS, the manufacturer must notify owners, purchasers, and dealers of the vehicle of the noncompliance. 49 U.S.C. 30118(c); see 49 CFR Part 573; 49 CFR Part 577.

U.S.C. 30102(a)(5). Both the importer of a motor vehicle and the fabricating manufacturer of the vehicle are responsible for remedying any noncompliance determined to exist in the vehicle. 49 CFR 573.5(a). As to imported motor vehicles, compliance with recall regulations by either the fabricating manufacturer or the importer of the vehicle shall be considered compliance by both. 49 CFR 573.3(b).

II. Remedy Requirements

A manufacturer of a noncomplying motor vehicle is required to remedy the vehicle without charge. 49 U.S.C. 30120(a). The manufacturer may remedy the noncompliance by repairing the vehicle, by replacing the vehicle with an identical or reasonably equivalent vehicle, or by refunding the purchase price, less a reasonable allowance for depreciation. 49 U.S.C. 30120(a). If a manufacturer decides to repair a noncomplying motor vehicle and the repair is not done adequately within a reasonable time, the manufacturer shall replace the vehicle without charge with an identical or reasonably equivalent vehicle, or refund the purchase price, less a reasonable allowance for depreciation. 49 U.S.C. 30120(c).

On its own motion or on application by any interested person, NHTSA may conduct a hearing to decide whether a manufacturer has reasonably met the remedy requirements. 49 U.S.C. 30120(e). If NHTSA decides that the manufacturer has not reasonably met the remedy requirements, it shall order the manufacturer to take specified action to meet those requirements, including by ordering the manufacturer to refund the purchase price of the noncomplying vehicles, less a reasonable allowance for depreciation. 49 U.S.C. 30120(a), (c), (e). NHTSA may also take any other action authorized by the Safety Act, including assessing civil penalties. See 49 U.S.C. 30120(e), 30165(a)(1). A person that violates the Safety Act, including its remedy requirements, or regulations prescribed thereunder, is liable to the United States Government for

a civil penalty of not more than \$6,000 for each violation. A separate violation occurs for each motor vehicle and for each failure to perform a required act. The maximum penalty for a related series of violations is \$17,350,000. 49 U.S.C. 30165(a)(1); 49 CFR 578.6.

III. MY 2009 Wildfire WF650-C

The MY 2009 WF650-C is a three-wheeled vehicle with an enclosed cab body style. As a three-wheeled vehicle, the MY 2009 WF650-C is subject to the FMVSSs for motorcycles. See 49 CFR 571.3(b).

Wildfire is the importer of the MY 2009 WF650-C and the registered agent for the fabricating manufacturer, Taixing Sandi Motorcycle Co., Ltd. (TSM) of China. Don Snyder is the President and CEO of the privately held Wildfire.

A. NHTSA's Investigation of the MY 2009 WF650-C

1. NHTSA's Testing and Apparent Noncompliances Identified

In 2009, NHTSA tested a NHTSA-owned MY 2009 WF650-C for compliance with FMVSS No. 122, Motorcycle brake systems, at Transportation Research Center Inc. (TRC) in East Liberty, Ohio.³

NHTSA identified multiple apparent noncompliances with FMVSS No. 122. First, the vehicle did not comply with the first effectiveness requirement of FMVSS No. 122, S5.2.1, Service brake system, because the service brakes were not capable of stopping the motorcycle from 30 m.p.h. within 54 feet during NHTSA's testing.⁴ Due to this apparent noncompliance with the stopping distance requirements, NHTSA terminated its testing following this first (preburnished) effectiveness testing. Additionally, NHTSA observed that the vehicle did not

³ See NHTSA, Safety Compliance Testing for FMVSS 122, Final Report No. 122-TRC-11-001 (Aug. 18, 2011). The test report is publicly available by searching on <http://www.nhtsa.gov/cars/problems/comply/>.

⁴ The vehicle also was unable stop from 45 m.p.h. within 121 feet, as required by the Standard, based on several attempted stops.

comply with FMVSS No. 122, S5.1.2.1, Master cylinder reservoirs, because it did not have a separate reservoir for each brake circuit with each reservoir filler opening having its own cover, seal, and cover retention device. NHTSA notified Wildfire of these apparent noncompliances on December 18, 2009.⁵

NHTSA also later identified and notified Wildfire of two additional apparent noncompliances with other requirements of FMVSS No. 122. First, the vehicle did not comply with FMVSS No. 122, S5.1.2.2, Reservoir labeling, because there was no label as required. Second, the vehicle did not comply with FMVSS No. 122, S5.1.3.1, Failure indicator lamp, because the vehicle did not have a failure indicator lamp (which is required to activate for pressure failure, low fluid, and momentarily when the ignition switch is turned to the “on” or “start” position).⁶

2. Wildfire’s Response to Apparent Noncompliances Identified By NHTSA

Although NHTSA provided Wildfire with information in December 2009 regarding the apparent noncompliances with the stopping distance and master cylinder reservoir requirements, Wildfire did not acknowledge at that time that the MY 2009 WF650-C failed to comply with FMVSS No. 122. NHTSA’s December 2009 letter requested certain information from Wildfire, to further its investigation of the apparent noncompliances.⁷ Wildfire responded on March 5, 2010 and made the unsubstantiated allegation (on behalf of TSM) that the NHTSA-owned vehicle’s brakes must have been out of adjustment, and therefore it was not a representative vehicle.⁸ Wildfire claimed that when TSM conducted brake testing in China, “the result was the

⁵ Letter from H. Thompson, NHTSA to D. Snyder, Wildfire (Dec. 18, 2009).

⁶ See Letter from C. Harris, NHTSA to D. Snyder, Wildfire (sent Dec. 27, 2011).

⁷ Letter from H. Thompson, NHTSA to D. Snyder, Wildfire (Dec. 18, 2009).

⁸ See Email from A. Tipton, Wildfire to S. Seigel, NHTSA (Mar. 5, 2010).

brakes were fine.”⁹ Wildfire provided an untranslated Chinese test report. However, that report did not appear to indicate that any stopping distance tests were performed. Wildfire also indicated that it conducted its own stopping distance tests, but did not provide any documentation evidencing that those tests were consistent with FMVSS No. 122.¹⁰ Wildfire did not provide any response regarding the apparent noncompliance with FMVSS No. 122, S5.1.2.1, Master cylinder reservoirs.

After NHTSA notified Wildfire that its response was deficient, Wildfire purported to conduct stopping distance testing on a vehicle in April 2010.¹¹ The testing data provided by Wildfire did not appear realistic, and NHTSA sought additional documentation from Wildfire.¹² Instead, Wildfire inquired, in June 2010, if it could make arrangements to observe the NHTSA-owned vehicle at TRC.¹³ In August 2010, Wildfire specifically requested retesting of the NHTSA-owned vehicle and the opportunity to make adjustments to the vehicle.¹⁴

After making arrangements with NHTSA, on September 28, 2010, Wildfire representatives inspected the vehicle at TRC and adjusted and bled the brakes. Wildfire claimed that these adjustments would allow the vehicle to comply with the stopping distance requirements. However, the adjustments did not materially change the results. When the vehicle was retested on September 30, 2010, it again failed to stop from 30 m.p.h. within 54 feet (or from 45 m.p.h. within 121 feet), as required by FMVSS No. 122, S5.2.1, Service brake system.¹⁵ NHTSA notified Wildfire of the results by email on October 1, 2010.¹⁶ Instead of acknowledging

⁹ Email from A. Tipton, Wildfire to S. Seigel, NHTSA (Mar. 5, 2010).

¹⁰ See Letter from C. Harris, NHTSA to D. Snyder, Wildfire (sent Dec. 27, 2011).

¹¹ Letter from C. Harris, NHTSA to D. Snyder, Wildfire (sent Dec. 27, 2011).

¹² See Letter from C. Harris, NHTSA to D. Snyder, Wildfire (sent Dec. 27, 2011).

¹³ See Letter from C. Harris, NHTSA to D. Snyder, Wildfire (sent Dec. 27, 2011).

¹⁴ See Letter from C. Harris, NHTSA to D. Snyder, Wildfire (sent Dec. 27, 2011).

¹⁵ Letter from C. Harris, NHTSA to D. Snyder, Wildfire (sent Dec. 27, 2011).

¹⁶ Email from S. Seigel, NHSTA to A. Tipton, Wildfire (Oct. 1, 2010).

the vehicle was noncompliant with FMVSS No. 122 following this testing, Wildfire continued to delay.

In December 2011, NHTSA requested in writing that Wildfire and/or TSM make a determination that the MY 2009 WF650-C is noncompliant with FMVSS No. 122 and conduct a voluntary recall. NHTSA's recall request letter addressed each of the four apparent noncompliances identified above.¹⁷

B. Wildfire's Notifications to NHTSA of FMVSS No. 122 Noncompliances

Following NHTSA's formal request, and over two years after NHTSA notified Wildfire of the apparent noncompliances with the stopping distance and master cylinder reservoir requirements, Wildfire initiated a recall.¹⁸ Wildfire first notified NHTSA that the MY 2009 WF650-C was noncompliant with FMVSS No. 122 by submitting a Part 573 Report prepared on January 30, 2012.¹⁹ Wildfire acknowledged noncompliances with the master cylinder reservoir, reservoir labeling, and failure indicator lamp requirements.

However, Wildfire did not address the stopping distance requirements of FMVSS No. 122 in its initial Part 573 Report. In a letter to Wildfire dated February 1, 2012, NHTSA again requested that Wildfire determine there was a noncompliance with S5.2.1, Service brake system.²⁰ Wildfire responded with an amended Part 573 Report, prepared February 3, 2012, acknowledging that NHTSA found that the WF650-C did not meet the stopping distance

¹⁷ Letter from C. Harris, NHTSA to D. Snyder, Wildfire (sent Dec. 27, 2011); see Letter from C. Harris, NHTSA to J. Ji, TSM (Jan. 18, 2012).

¹⁸ Although TSM did not respond to NHTSA's recall request, compliance with recall regulations by either the fabricating manufacturer or the importer of a vehicle is considered compliance by both. 49 CFR 573.3(b). Nothing herein limits TSM's responsibilities and liabilities for the noncompliance with these vehicles.

¹⁹ Recall No. 12V-031, Part 573 Report (prepared Jan. 30, 2012). Wildfire's Part 573 Reports and other documents relevant to the recall are available at www.safercar.gov.

²⁰ Letter from C. Harris, NHTSA to D. Snyder, Wildfire (Feb. 1, 2012).

requirements of FMVSS No. 122, in addition to acknowledging the other noncompliances addressed by Wildfire's earlier Part 573 Report.²¹

NHTSA identified several deficiencies with Wildfire's amended Part 573 Report, including that it failed to include a clear and unequivocal statement by Wildfire that a noncompliance existed with the stopping distance requirements of FMVSS No. 122 and failed to specify a valid remedy for that noncompliance.²² Wildfire subsequently submitted a second amended Part 573 Report, prepared February 20, 2012.²³ This Part 573 Report acknowledged noncompliances with all four requirements identified by NHTSA.

NHTSA assigned Recall Number 12V-031 to Wildfire's recall campaign. Most recently, Wildfire reported that there are 197 vehicles subject to the recall.²⁴

C. Wildfire's Repair Remedy

Wildfire elected the remedy of repairing the FMVSS No. 122 noncompliances subject to the recalls. See 49 U.S.C. 30120(a). However, Wildfire reported in August 2012 that none of the vehicles subject to the recall have been repaired.²⁵

In its notification letter to owners regarding the recall, Wildfire indicated that the WF650-C should not be operated until the vehicle is remedied, that parts should be available for the repair after May 14, 2012, and that owners should contact a Wildfire dealer as soon as possible to obtain a service date.²⁶ Wildfire first sent this letter on April 18, 2012 to owners based on

²¹ Recall No. 12V-031, Amended Part 573 Report (prepared Feb. 3, 2012).

²² Letter from C. Harris, NHTSA to D. Snyder, Wildfire (Feb. 9, 2012).

²³ Recall No. 12V-031, Second Amended Part 573 Report (prepared Feb. 20, 2012).

²⁴ Recall No. 12V-031, Quarterly Report (Aug. 21, 2012). Wildfire previously reported that there were 202 or 200 vehicles subject to the recall, but has not explained why the number has changed. See Recall No. 12V-031, Part 573 Report I (prepared Jan. 30, 2012) (202 vehicles); Recall No. 12V-031, Amended Part 573 Report I (prepared Feb. 3, 2012) (202 vehicles); Recall No. 12V-031, Second Amended Part 573 Report I (prepared Feb. 20, 2012) (200 vehicles).

²⁵ Recall No. 12V-031, Quarterly Report (Aug. 21, 2012).

²⁶ Wildfire, Response to Special Order, Request for Production of Documents No. 2, Att. (July 12, 2012).

information from its internal records about purchasers.²⁷ It appears Wildfire subsequently sent the same letter on June 1, 2012 to registered owners, based on vehicle registration information, despite knowing that the information in the letter was incorrect because parts were still not available.²⁸

After Wildfire failed to provide NHTSA with sufficient information about its proposed repair remedy in response to NHTSA's requests, on June 5, 2012 NHTSA sent Wildfire a Special Order seeking additional information related to the recall and repair remedy. Wildfire responded to the Special Order on July 12, 2012. Wildfire indicated in its response that it did not expect parts to be available for the repairs until July 20, 2012.²⁹ Wildfire also indicated that it would send dealers instructions for the repair remedy on July 20, 2012.³⁰ It appears that Wildfire did not do so.³¹

Wildfire also represented in its Special Order response, made under oath, that its repair remedy would make MY 2009 WF650-Cs compliant with all applicable requirements of FMVSS No. 122.³² Wildfire indicated it was relying on a representation from TSM (the Chinese fabricating manufacturer).³³ Wildfire did not provide any testing data or other information to support the contention that the repair remedy was effective. In fact, Wildfire acknowledged it

²⁷ Wildfire, Response to Special Order, Interrogatory No. 14, Att. (July 12, 2012).

²⁸ See Wildfire, Response to Special Order, Interrogatory No. 15 (July 12, 2012). In addition to receiving a notice containing incorrect information, registered owners also did not receive a notification of the recall until well after 60 days from Wildfire's noncompliance decision, as is expected. See NHTSA, Safety Recall Compendium at 7-8, <http://www-odi.nhtsa.dot.gov/cars/problems/recalls/documents/recompendium.pdf>.

²⁹ Wildfire, Response to Special Order, Interrogatory No. 15 (July 12, 2012).

³⁰ Wildfire, Response to Special Order, Interrogatory No. 13 (July 12, 2012).

³¹ A manufacturer is required to furnish NHTSA with a copy of each communication involving a recall that the manufacturer issued to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, owner, or purchaser, no later than five working days after the end of the month in which it is issued. 49 CFR 579.5.

³² Wildfire, Response to Special Order, Interrogatory No. 4 (July 12, 2012).

³³ Wildfire, Response to Special Order, Interrogatory No. 4 (July 12, 2012).

was not sure whether the remedy had been tested.³⁴ Wildfire also represented in its response that it hoped to have all MY 2009 WF650-Cs repaired by September 5, 2012.³⁵

Wildfire also entered into an Agreement with NHTSA to repair the NHTSA-owned MY 2009 WF650-C in accordance with its repair remedy, which NHTSA would then retest to the requirements of FMVSS No. 122.³⁶ Wildfire retrieved the vehicle on July 23, 2012, purported to repair it, and returned it to NHTSA on July 31, 2012.³⁷ Pursuant to the Agreement, by August 10, 2012, Wildfire was required to provide NHTSA with a detailed description of every part installed as well as every change or modification made to the vehicle, which Wildfire failed to do. NHTSA proceeded with testing its repaired WF650-C vehicle in August and September 2012. Based on this testing, the repaired vehicle still did not meet the stopping distance requirements of FMVSS No. 122, S5.2.1, Service brake system. NHTSA also observed that the failure indicator lamp installed by Wildfire as part of its remedy did not meet the requirements of FMVSS No. 122, S5.1.3.1, Failure indicator lamp, because it did not: (1) activate as required for low fluid; (2) activate as required for pressure failure; (3) momentarily activate when the ignition switch was turned from the “off” to the “on” or to the “start” position; and (4) include the required wording (“Brake Failure”).³⁸

Thus, contrary to Wildfire’s representation, its repair remedy does not bring the recalled vehicles into compliance with FMVSS No. 122. The vehicles subject to the recall remain noncompliant.

IV. Decision to Conduct a Public Hearing

³⁴ Wildfire, Response to Special Order, Interrogatory No. 6 (July 12, 2012).

³⁵ Wildfire, Response to Special Order, Interrogatory No. 5 (July 12, 2012).

³⁶ Letter from O. K. Vincent, NHTSA to D. Snyder, Wildfire (July 17, 2012) (enclosing fully executed repair Agreement).

³⁷ Contrary to the terms of the Agreement, Wildfire kept the vehicle longer than 5 business days and drove the vehicle approximately 48 more miles than the 2 miles it was permitted.

³⁸ NHTSA, Safety Compliance Testing for FMVSS 122, Final Report No. 122-TRC-12-003 (Sept. 19, 2012).

NHTSA has decided that it is necessary to conduct a public hearing to decide whether Wildfire has reasonably met the remedy requirements under 49 U.S.C. 30120. See 49 U.S.C. 30120(e); 49 CFR 557.6(d), 557.7. NHTSA will conduct the public hearing in the Oklahoma City room of the U.S. Department of Transportation Conference Center, located on the first floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC 20590. Any interested person may make written and/or oral presentations of information, views, and arguments on whether Wildfire has reasonably met the remedy requirements. There will be no cross-examination of witnesses. 49 CFR 557.7.

NHTSA will consider the views of participants in deciding whether Wildfire has reasonably met the remedy requirements under 49 U.S.C. 30120, and in developing the terms of an order (if any) requiring Wildfire to take specified action as the remedy for the noncompliances and/or take other action. 49 U.S.C. 30120(e); 49 CFR 557.8.

PROCEDURAL MATTERS: Interested persons may participate in these proceedings through written and/or oral presentations. Persons wishing to attend must notify Sabrina Fleming, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-9896) (Fax: 202-366-3081), before the close of business on October 9, 2012 (and October 4, 2012 for non-U.S. citizens). Each person wishing to attend must provide his or her name and country of citizenship. Non-U.S. citizens must also provide date of birth, title or position, and passport or diplomatic ID number, along with expiration date. Each person wishing to make an oral presentation must also specify the amount of time that the presentation is expected to last, his or her organizational affiliation, phone number, and email address. NHTSA will prepare a schedule of presentations. Depending upon the number of persons who wish to make oral presentations and the anticipated length of those presentations,

NHTSA may add an additional day or days to the hearing, and/or may limit the length of oral presentations.

The hearing will be held at a site accessible to individuals with disabilities. Individuals who require accommodations, such as sign language interpreters, should contact Ms. Kerry Kolodziej using the contact information in the FOR FURTHER INFORMATION CONTACT section above no later than October 4, 2012. A transcript of the proceedings will be placed in the docket for this notice at a later date.

Persons who wish to file written comments should submit them so that they are received by NHTSA no later than October 9, 2012. Information on how to submit written comments to the docket is located under the ADDRESSES section of this notice.

Authority: 49 U.S.C. 30120(e); 49 CFR 557.6(d), 557.7; delegations of authority at 49 CFR 1.95(a), 501.2(a)(1), and 49 CFR 501.8.

Issued: September 19, 2012

Daniel C. Smith
Senior Associate Administrator
For Vehicle Safety

Billing Code: 4910-59-P

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